

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 3163 – SB 3591

April 7, 2010

SUMMARY OF AMENDMENTS (015986, 016352): Deletes all language of the original bill. Deletes effective date of March 28, 2011 when sole proprietors and partners engaged in the construction industry will be required to carry workers' compensation coverage on themselves and replaces it with March 1, 2011. Creates a procedure for sole proprietors, partners in a limited partnership or limited liability partnership, officers of corporations, and members of limited liability companies engaged in the construction industry to file for an exemption from obtaining workers compensation insurance to cover themselves. Authorizes the Secretary of State to charge a maximum fee of \$100 for a construction services provider registration or renewal and \$100 for a construction services provider workers' compensation exemption. Creates the Workers' Compensation Employee Misclassification Education and Enforcement Fund. Requires that all money in the fund be allocated to the Secretary of State's office to administer the provisions of this bill as amended. Requires any surplus in the fund, beginning in fiscal year 2013-2014, be allocated to the Department of Labor and Workforce Development and the Secretary of State. Creates the Joint Enforcement Taskforce on Payroll Fraud to study issues relative to employee misclassification and workers' compensation. The task force will include the Commissioner of the Department of Labor and Workforce Development or designee, the Commissioner of the Department of Commerce and Insurance or designee, the Secretary of State or designee, the Attorney General or designee, and one person appointed by the Governor. Authorizes the Secretary of State to promulgate rules and regulations.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue – \$150,000/General Fund

Decrease State Revenue –

\$46,600/FY10-11/General Fund

\$4,600/FY10-11/Tennessee Occupational Safety and Health Act
(TOSHA)

\$523,900/FY11-12 and Subsequent Years/General Fund

\$52,300/FY11-12 and Subsequent Years/TOSHA

Increase State Expenditures – \$212,400/One-Time/General Fund

\$246,400/Recurring/General Fund

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FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

**Increase State Revenue – \$712,500/FY10-11 and biennially thereafter/
Workers’ Compensation Employee Misclassification
Education and Enforcement Fund (WCEMEEF)**

**Decrease State Revenue –
\$159,100/FY10-11/General Fund
\$15,900/FY10-11/Tennessee Occupational Safety and Health Act
(TOSHA)
\$636,400/FY11-12 and Subsequent Years/General Fund
\$63,600/FY11-12 and Subsequent Years/TOSHA**

**Increase State Expenditures – \$188,600/FY10-11/WCEMEEF
\$17,800/Recurring/WCEMEEF
\$389,600/FY10-11/General Fund
\$286,600/FY11-12 thru FY12-13/General Fund
\$286,600/FY13-14 and Subsequent Years/WCEMEEF**

Other Fiscal Impact – Beginning in FY13-14, any surplus in the WCEMEEF will be allocated to the Department of Workforce and Development and the Secretary of State. The specific amount allocated to each department is not defined in the bill as amended. In FY13-14 there will be a surplus in an amount up to \$1,165,300. In years following FY13-14 the biennial surplus will be in an amount up to \$676,900.

Assumptions applied to amendments:

- According to the Department of State, approximately 2,375 construction service providers do not have a license issued by the Board and will apply to be listed on the Workers Compensation Exemption Registry which will be valid for two years at a total fee of \$200 each. Approximately 2,375 do have a license issued by the Board and will apply to be listed on the Workers Compensation Exemption Registry at a total fee of \$100 each. The total increase to biennially recurring state revenue will be \$712,500 $[(2,375 \times \$200) + (2,375 \times \$200)]$.
- According to the Department of State, computer programming expenditures associated with this bill as amended will increase one-time state expenditures by \$188,600 $[(456 \text{ Business Analysis IT Pro hours} \times \$80.19 \text{ per hour}) + (1,520 \text{ Program Coding} \times \$100 \text{ per hour})]$.
- An increase to recurring state expenditures of \$12,000 for printing, envelopes, and postage and a recurring increase to state expenditures of \$5,800 for Web services (\$480 per month). The total increase to recurring state expenditures will be \$17,800.
- In FY13-14, the surplus in the WCEMEEF will be up to \$1,165,300 $(\$712,500 \text{ FY10-11 revenue} + \$712,500 \text{ FY12-13 revenue} - \$206,300 \text{ FY10-11 expenditures} - \$53,400 \text{ FY11-12 thru FY13-14 expenditures})$. In years following FY13-14 the biennial surplus will be in an amount up to \$676,900 $[(\$712,500 \text{ biennial revenue}) - (\$17,800 \text{ expenditures per year} \times 2 \text{ years})]$.

- Under current law, certain sole proprietors and partners engaged in the construction industry are not required to carry workers' compensation insurance until March 28, 2011. Beginning March 28, 2011 these workers would be required to carry workers' compensation insurance and pay premium taxes of four percent plus a 0.04 percent surcharge for TOSHA.
- Based on information provided by the Department of Commerce and Insurance, the exemption of individuals carrying workers' compensation insurance will result in a recurring decrease in state revenue of approximately \$700,000 beginning March 28, 2011. The total decrease in FY10-11 will be \$175,000; approximately \$15,900 is earmarked for TOSHA and \$159,100 is from the General Fund. The total decrease in FY11-12 and subsequent years is \$636,400 from the General Fund and \$63,600 from TOSHA.
- The net impact in FY10-11 will be a decrease in state revenue of \$46,600 (\$159,100 - \$112,500) to the General Fund and \$4,600 (\$15,900 - \$11,300) to TOSHA.
- The net impact in FY11-12 and subsequent years will be a \$523,900 decrease to recurring state revenues in the General Fund and a decrease of \$52,300 to TOSHA.
- According to the Department of Labor and Workforce Development, the Department currently investigates 900 requests for investigations into workers' compensation premium deductions from wages.
- According to the Department of Labor and Workforce Development, one additional Workers' Compensation Specialist 4 position at a salary of \$57,500 and benefits of \$19,600, three Workers' Compensation Specialist 1 positions at a salary of \$35,000 and benefits of \$11,900 each (one in each grand division), and one Administrative Assistant 3 position at a salary of \$28,700 and benefits of \$9,800 will be needed in order to investigate the additional requests. Recurring expenditures associated with five additional positions will be \$30,300. The total increase to recurring state expenditures will be \$286,600.
- One-time costs associated with the five new positions will be \$28,000 (office supplies and computer equipment).
- According to the Department of Labor and Workforce Development, there will be a one-time cost of \$75,000 for computer programming in order to create a program to receive applications and terminations of notices of election.
- Any increase to state expenditures associated with the administration of the WCEMEEF created in this bill as amended will be not significant.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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